IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

(1) S.B. CRIMINAL REVISION PETITION NO.178/2001
(K.C. Jain Vs. State)

(2) S.B. CRIMINAL REVISION PETITION NO.414/2001
(Prem Prakash Vs. State)

(3) S.B. CRIMINAL REVISION PETITION NO.456/2000
(Prem Prakash Vs. State)

(4) S.B. CRIMINAL REVISION PETITION NO.4703/2006(DR/J)
(Manohar Roop Rai Vs. State)

Date of order : December 18th, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. P.N. Mohnani with
Mr. G.R. Punia, for the petitioners.
Mr. Vishnu Kachchwaha, Public Prosecutor for State.

In all the above revision petitions, common question of law is involved, therefore, these revision petitions are decided by this common order.

(SB Criminal Revision Petition No.178/2001) :

In this revision petition, the petitioner K.C. Jain is challenging the order dated 15.1.2001 passed by Sessions Judge (Anti Corruption Cases), Bikaner whereby the learned trial Court has framed charge against the petitioner for offence under Section 409 alternatively under Section 420 I.P.C. read with section 120B, 467, 468, 471 I.P.C and section 13 (1) (c) (d) read with section 13 (2) Prevention of Corruption Act in criminal case No.120/97.

According to the facts of the case, a challan was filed against three accused persons for offences mentioned above and allegations against them are that they did not get certain petty repairs and white wash done and caused loss to the tune of Rs.7920/- and at that relevant time, petitioner was working as Chief Medical & Health Officer, Bikaner and after completion of investigation, the matter was sent for sanction and State Government has granted sanction for offence under Section 409, 420, 467, 468, 471, 120B and section 13 (1) (d) read with section 13 (2) Prevention of Corruption Act. According to the learned counsel for the petitioner, learned trial Court has framed charge against the petitioner for offence under Section 409 alternatively under Section 420 read with Section 120B, 467, 468, 471 IPC and section 13 (1) (c)

(d) read with section 13 (2) Prevention of Corruption Act. Learned counsel for the petitioner is challenging charge on the ground that no charge can be framed for sections for which no sanction was granted by State Government. According to the petitioner, there was no sanction for charge of offence under section 13 (1) (c) Prevention of Corruption Act. Therefore, the charges deserves to be quashed. Learned counsel for the petitioner submits that framing of alternative charge in a case where sanction is given is illegal. There is no sanction for alternative charge and alternative charge can only be framed when there is doubt about facts and offence. The sanction was granted against the accused for substantive offences and court has no jurisdiction to change the nature of offences and charge the accused with the aid of the offence of conspiracy under Section 120B IPC. According to the learned counsel for the petitioner illegality has been committed by learned trial Court because at the time of framing charge, there is non-application of mind by learned trial Judge and the court below has reproduced verbatim the language of the sanction in the challan filed against the accused. Therefore, jumbled charges are not permissible in the way the learned trial Judge has framed them. Therefore, learned counsel for the petitioner prayed that this revision petition may be allowed and charge framed against the petitioner may be quashed. Learned counsel for the petitioner has

invited my attention towards the judgment reported in 1992 Cri.L.J. 3064 (Bombay) and another judgment reported in 2000 (3) Crimes 105 (SC) and prayed that no charge can be framed for such offence for which no sanction is granted by the State. Therefore, the order may be quashed.

Learned Public Prosecutor vehemently opposed the prayer and stated that hyper-technical ground is raised by the petitioner, which is not tenable as per the facts of the case, the State Government has granted sanction for prosecution and it is for the trial Court to frame charge according to the facts and evidence of the case. No restriction can be imposed upon the trial Court to frame the charge in accordance with sanction only.

(SB Criminal Revision Petition No.414/2000) :

In this case, challan was filed by Rajasthan State Investigation Bureau against the petitioner and other persons for commission of irregularities in the Muster roll No.80 pertaining to year 1982. The Bureau filed a challan for offences under section 420, 467, 468, 471, 120B IPC and section 5 (1) (d) (2) Prevention of Corruption Act. After filing challan, the learned trial Judge framed charge against the petitioners and others and earlier charge framed against the petitioner was set aside by this Court and

the learned trial Judge was directed to hear afresh and then pass a fresh order. Learned trial Judge again framed charges for offence mentioned above against the petitioner which is contrary to law.

Learned counsel for the petitioner argued that no prosecution sanction was granted against the petitioner for offence under Section 466 I.P.C. and section 5 (1) (c) (2) Prevention of Corruption Act. Therefore, there is no question of framing such charge for which no sanction was accorded. It is further submitted that learned trial Court has discharged the accused for offences under section 420, 467, 468, 471 I.P.C. for which sanction was granted but has framed charge under Section 466 IPC which offence is not committed by the petitioner and said charge is totally irrelevant. It is also submitted that offence under Section 5 (1) (c) (d) (2) Prevention of Corruption Act, 1947 was not in existence on the date of sanction as well as on the date of cognizance, therefore, no charge for this offence was to be framed. There is no evidence of conspiracy, therefore, the charge for offence under Section 120B I.P.C. is not maintainable. It is prayed by counsel for the petitioner that no offence is committed by the petitioner and charges framed for offences for which no sanction was accorded by the State, therefore, the charges framed against the petitioner deserves to be set aside.

Learned Public Prosecutor apprised this Court that against the order of discharge for offence under Section 420, 467, 468, 471 I.P.C., the State has preferred revision petition, which is registered as SB Criminal Revision Petition No.633/2000.

(SB Criminal Revision Petition No.456/2000) :

In this case, challan was filed by Rajasthan State Investigation Bureau against the petitioner for commission of irregularities in the Muster roll No.81 pertaining to year 1982. The Bureau filed a challan for offences under section 420, 467, 468, 471, 120B IPC and section 5 (1) (d) (2) Prevention of Corruption Act. After filing challan, the learned trial Judge framed charge against the petitioner but charge framed against the petitioner was set aside by this Court and matter was remitted to re-hear and pass fresh order in accordance with the law.

Learned counsel for the petitioner argued that after hearing both the parties, the learned lower court has discharged the accused for offence under Sections 420, 467, 468, 471 IPC for which prosecution sanction was granted but framed charges for offence under Section 466 and Section 5 (1) (c) (2) Prevention of Corruption Act, which offence is not committed by the petitioner, so also, no sanction was granted by the State for prosecution under Section 466 and

Section 5 (1) (c) (2) of Prevention of Corruption Act. It is also submitted that offence under Section 5 (1) (c) (d) (2) Prevention of Corruption Act, 1947 was not in existence on the date of sanction as well as on the date of cognizance, therefore, no charge for this offence can be framed. There is no evidence of conspiracy, therefore, the charge for offence under Section 120B I.P.C. is not maintainable. It is prayed by counsel for the petitioner that no offence is committed by the petitioner and charges framed for offences for which no sanction was accorded by the State, therefore, the charges framed against the petitioner deserves to be set aside.

Learned Public Prosecutor vehemently opposed the prayer and submitted that the learned trial Court has rightly framed the charges against the petitioner. Learned Public Prosecutor also apprised this Court that against the order of discharge for offence under Section 420, 467, 468, 471 I.P.C., the State has preferred revision petition, which is registered as SB Criminal Revision Petition No.619/2000.

S.B. CRIMINAL REVISION PETITION NO.4703/2006(DR/J) :

Learned counsel for the petitioner has filed an application under Section 5 of the Limitation Act as this revision petition is barred by limitation by

2112 days.

In this case, after investigation challan was filed by Rajasthan State Investigation Bureau against the petitioner for commission of irregularities in the Muster roll Nos.28, 80 and 81 pertaining to year 1982. The Bureau filed a challan for offences under section 420, 467, 468, 471, 120B IPC and section 5 (1) (d) (2) Prevention of Corruption Act.

After filing challan, the learned trial Judge framed charge against the petitioner and other persons but those charges framed against the petitioner was set aside by this Court and the learned trial Judge was directed to hear the matter afresh and then pass fresh order in accordance with law. Learned trial Judge after hearing afresh as ordered by this Court again framed charges for offence under Section 466 I.P.C. and Section 5 (1) (c) (2) Prevention of Corruption Act and discharged the petitioner for offence as mentioned above.

Learned counsel for the petitioner argued that charge for offence under Section 466 I.P.C. is totally irrelevant as no sanction was granted by the State against the petitioner for prosecution under under Section 466 I.P.C. and section 5 (1) (c) (2) Prevention of Corruption Act. Therefore, there is no question of framing such charge for which no sanction

was accorded. It is also submitted that offence under Section 5 (1) (c) (d) (2) Prevention of Corruption Act, 1947 was not in existence on the date of sanction as well as on the date of cognizance, therefore, no charge for this offence was to be framed. Likewise, there is no evidence of conspiracy, therefore, the charge for offence under Section 120B I.P.C. is not maintainable. It is prayed by counsel for the petitioner that no offence is committed by the petitioner and charges have been framed for offences for which no sanction was accorded by the State, therefore, the charges framed against the petitioner deserves to be set aside.

After hearing both the parties, the question which arises for consideration before this Court is whether any charge can be framed by the trial Court for the offence for which no sanction was granted by the State and whether it is open for the trial Court to frame the charge for any other offence then the offence for which the sanction is granted. In this connection, the provisions of Section 6 of the Prevention of Corruption Act, 1947 is required to be taken into account, which reads as follows :

> "6 Previous sanction necessary for prosecution. (1) No court shall take cognizance of an offence punishable under Section 161 or Sec. 164 or Sec. 165 of Indian Penal Code (45 of 1860) or under

> sub-section (2) or sub-section (3) of Sec. 5 of this Act, alleged to have been committed by a public servant except with the previous sanction-
>
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of the Central Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of the State Government.
>
> (c) in the case of any other person, of the authority competent to remove him from his office.
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> (2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

The contention which is raised by the learned counsel for the petitioners with regard to sanction for particular offence was obtained from the Government or not was not raised at the time of

framing charge.

I have perused the impugned orders. The petitioners in each of the revision petition have nowhere agitated or argued before the trial Court that there is no sanction by the Government for framing charge for offence in particular section of Prevention of Corruption Act. It is obvious that for prosecuting any person for offence under the Prevention of Corruption Act, sanction is required to be taken but whether any specific sanction is required or not, it is required to be adjudicated by the trial Court first. In this case, the ground which is raised by the learned counsel for the petitioner with regard to levelling charge for those offence for which no sanction was granted by the Government is a question which requires consideration by the trial Court first. Therefore, in my opinion when no such argument was advanced before the trial Court then, it is obvious that charge was to be framed on the basis of the merit of the case. Learned trial Court has framed the charge after taking into account the material on record for those offences for which evidence is on record.

Learned counsel for the petitioner has invited the attention of this Court towards judgment reported in 1992 Cri.L.J. 3064 and submitted that Hon'ble Bombay High Court set aside the charge of the

petitioner in that case only on the ground that no sanction for particular offence was granted by the Government and learned trial Court framed the charge for such offence. He has invited the attention of this Court towards yet another judgment rendered by this Court in SB Criminal Revision Petition No.427/1997 decided on 5.11.1997, which is based upon the aforesaid judgment of Bombay High Court. Obviously the question of law can be raised at any time but in this case it is for the trial Court to first adjudicate what offence is made out against the petitioners and whether for the said offence any sanction is granted by the State Government. In this case, this question with regard to not granting sanction by the State Government for particular section was not raised.

In these circumstances, , I deem it just and proper to quash the impugned orders and remit all these cases to the trial court for re-hearing the case with the liberty to the petitioners as well as the State to raise their grounds with regard to sanction so also on merit of the case for framing charge.

Accordingly, all the aforesaid petitions are partly allowed. The order impugned are set aside and all the cases are remitted to the trial Court to decide the matter afresh with regard to framing of charge while taking into account all the grounds taken

by the petitioners as well as by the State Government. The petitioners may appear before the concerned trial Court on 4.2.2008 and raise all grounds including the ground for not taking cognizance for those offences for which no sanction has been granted by the State.

(GOPAL KRISHAN VYAS), J.

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